

REMARKS

Claims 1-40 are pending in the Application and are subject to a restriction requirement in the Office action mailed October 2, 2008. Applicants have amended claim 1 and cancelled claim 3 as shown above. Claims 1 and 20 are independent claims from which claims 2-19 and 21-40 depend, respectively.

Applicants respectfully request reconsideration of pending claims 1-40, in light of the following remarks.

Restriction Requirement

Pending claims 1-40 were subject to a restriction requirement under 35 U.S.C. §1.121 in the Office action mailed October 2, 2008. The Office action set forth a restriction requirement upon pending claims 1-40, restricting the Application to one of two inventions. The Office identified "Invention I" to include claims 1-19, and "Invention II" to include claims 20-40. Applicants respectfully traverse the restriction requirement for at least the reasons set forth below.

The Office asserts that "Invention I" and "Invention II" have "...separate utility...", stating in part at page 2:

Inventions I, and II, are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable (MPEP § 806.05 (c). In the instant case, invention I has separate utility such as a method of updating an electronic device. Invention II has separate utility such as a mobile services network. Furthermore the combination of group I and II, as claimed does not require the particulars of the subcombination as claimed because updating an electronic device could be accomplished or performed without necessary need for a mobile services network as required in invention II.

Applicants respectfully disagree. Applicants have amended independent claim 1 to include the features of dependent claim 3. Independent claim 1 now recites, in part, "...wherein determining the authenticity of the notification comprises contacting a notification history server, the notification history server keeping a record of notifications sent to the electronic device." Applicants respectfully submit that independent claim 20

recites, in part, "...a notification history server operatively connected to the management server, the notification history server comprising a record of authentic notifications sent to the at least one electronic device."

The M.P.E.P. states, in part, at §803:

Under the statute, the claims of an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent (MPEP § 802.01, § 806.06, and § 808.01) or distinct (MPEP § 806.05 - § 806.05(j)).

If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

Initially, Applicants have amended claim 1 to include the features of claim 3, as shown above. Applicants respectfully submit that the Office has failed to show, for example, that Applicants' claimed feature "a notification history server" that "keep[s] a record of notifications sent to the electronic device...", recited by Applicants' amended claim 1, is taught by any of the prior art. The Office simply makes a conclusory statement that "...invention I has separate utility such as a method of updating an electronic device...", merely repeating a portion of the preamble of the claim. The Office, however, has failed to set forth any showing that any of the prior art teaches or suggests "a notification history server" in accordance with Applicants' amended claim 1, let alone that such prior art is usable with the subject matter of claim 1, or with the features of its dependent claims. Therefore, the Office has failed to show that the method of claim 1 is able to be practiced with any of the prior art, and therefore has failed to show that it has the "separate utility" asserted by the Office.

Applicants respectfully submit that the Office has also failed to show, for example, that Applicants' claimed feature "a notification history server", as recited by Applicants' independent claim 20, is taught by any of the prior art. Applicants' claim 20 states, in part, "...a notification history server operatively connected to the management server, the notification history server comprising a record of authentic notifications sent to the at least one electronic device...." The Office once again simply makes a

conclusory statement that "...invention II has separate utility such as a mobile services network...", simply repeating a portion of the preamble of claim 20. However, the Office fails to set forth any showing that any of the prior art teaches or suggests "a notification history server" in accordance with Applicants' amended claim 20, let alone that such prior art is usable with the subject matter of claim 20, or with the features of the dependent claims of independent claim 20. Therefore, the Office has failed to show that the subject matter of claim 20 is able to be practiced with any of the prior art and, therefore, that it has the "separate utility", asserted by the Office.

In addition, Applicants respectfully submit that, even if the claims of "Invention I" and "Invention II" are found to be independent or distinct, the Office has failed to set forth any showing that the examination of the claims in the Application would subject the Examiner to a "serious burden", as required by M.P.E.P. §803. Indeed, the instant Office action makes no statement concerning the impact upon the Examiner if restriction is not required. Therefore, for at least this reason alone, Applicants respectfully submit that the Office has not met the requirements of M.P.E.P. §803 in establishing a basis for a restriction requirement.

Therefore, for at least the reasons set forth above, Applicants respectfully submit that the Office has failed to show that a requirement for restriction in the Application is proper, and respectfully request that the restriction requirement under 35 U.S.C. §1.121 set forth by the instant Office action be reconsidered and withdrawn.

Notwithstanding the above, should the Office choose to maintain the restriction in the Application, Applicants hereby provisionally elect "Invention II", which has been identified by the Office as including claims 20-40, and provisionally cancel pending claims 1-19, identified as "Invention I", without prejudice or disclaimer. Applicants hereby expressly reserve the right to re-file claims 1-19 in a later-filed continuing application.

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Conclusion

Applicants encourage the Commissioner or staff to contact the undersigned, should there be any questions about this submission.

An early Office Action on the merits and allowance of claims 20-40 is respectfully requested.

Respectfully submitted,

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